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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

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AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF
SOUTHWEST GAS CORPORATION FOR
THE ESTABLISHMENT OF JUST AND
REASONABLE RATES AND CHARGES
DESIGNED TO REALIZE A REASONABLE
RATE OF RETURN ON THE FAIR VALUE
OF ITS PROPERTIES THROUGHOUT
ARIZONA.

DOCKET NO. G-01551A-10-0458

STAFF'S REPLY BRIEF

The Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission") files its reply brief. The recommendations of Staff and its positions have been outlined in its Closing Brief as well as its testimony. Staff continues to believe that the Settlement Agreement ("Agreement") between Staff, Southwest Gas Corporation ("Southwest" or "Company"), the Southwest Energy Efficiency Project ("SWEEP"), Arizona Investment Council ("AIC"), the Natural Resource Defense Council ("NRDC") and Cynthia Zwick (collectively the "Signatories") is in the public interest and would urge its adoption by the Commission. Staff will highlight some of the major points of disagreement with the arguments advanced by the Residential Utility Consumer Office ("RUCO") in its opposition to the Agreement.

I. RUCO'S CRITICISMS ARE UNSUPPORTED AND SHOULD BE DISGARDED.

RUCO argues that because the Commission has rejected decoupling in the past, it should continue to do so. It seems that RUCO is suggesting that the Commission cannot revisit an issue or a ruling and make a different one. This suggestion is at odds with the Commission's ratemaking authority.

An agency must at all times be free to take such steps as may be proper in the circumstances irrespective of its past decisions. Even when conditions remain the same, the administrative understanding of those conditions may change, and the agency must be free to act. So long as the Commission enters sufficient findings to

1 show that its action is not arbitrary and capricious, the Commission can alter its
2 decisions.¹

3 In addition, the Commission's constitutional authority contemplates that under Article XV, Section 3
4 of the Arizona Constitution; the Commission would review and reconsider its decisions. That
5 provision provides that:

6 *...classifications, rates, charges, rules, regulations, orders, and forms or systems*
7 *prescribed or made by . . . [the]Corporation Commission may from time to time be*
8 *amended or repealed by such Commission.*[Emphasis added).

9 Apparently, Arizona's constitutional framers had the foresight to recognize that the Commission
10 would need to amend its orders from "time to time" in the exercise of its constitutional authority, and
11 provided specific constitutional language to achieve that result.

12 As RUCO notes, the Company has requested some type of revenue decoupling in its past two
13 rate applications and such requests have been denied by the Commission. But what RUCO fails to
14 acknowledge is the impact that will be felt by gas utilities following the Commission's adoption of
15 energy efficiency rules for gas utilities. The rules will impact gas utility revenues as acknowledged
16 by the Commission in its Notice of Final Rulemaking, where the Commission noted:

17 The Gas Utility Energy Efficiency Standards rules will impact an affected utility's
18 revenues, at least in the interim period before the affected utility's next rate case,
19 because DSM and RET programs may reduce therm consumption. Currently, affected
20 utilities' rate schemes rely heavily upon volumetric rates, meaning that the amount a
21 customer is billed by the affected utility is based in large part upon the number of
22 therms consumed by the customer during the billing period. If that amount is reduced
23 by the customer's decreased consumption resulting from DSM and RET programs, the
24 affected utility's revenues will be impacted accordingly.²

25 RUCO argues on brief that decoupling will increase rates.³ However as RUCO's witness Ben
26 Johnson testified, when asked whether he did an analysis to determine the rater per therm impact of
27 decoupling, he responded: "I might have, but if I did, I don't remember. I don't think so."⁴ Dr.
28 Johnson further testified that he relied on his "intuitive sense of the numbers" to arrive at his
29 conclusion.⁵ Given RUCO's vigorous objections to decoupling, it is surprising that a more in-depth

30 ¹ *Citizens v. Idaho Comm'n*, 739 P.2d 360, 362, 112 Idaho 1061, 1063 (1987).

31 ² Notice of Final Rulemaking at 4, Docket No. RG-00000B-09-0428.

32 ³ RUCO Br. at 3.

33 ⁴ Tr. at 594:23-24.

34 ⁵ Tr. at 595:6-7.

1 analysis was not conducted and not just a repeat of speculative arguments. Because RUCO did no
2 analysis, it is hard to accept the testimony as credible. In the Company's last rate case, the
3 Commission wanted to move beyond innuendo, theory and speculation and ordered Southwest Gas to
4 file a report analyzing the effects of decoupling over 6 years (2003-2008). Mr. Hester testified that
5 the largest impact would have resulted in a 5.4 percent decrease.⁶ RUCO offered no credible
6 evidence that decoupling alone raises rates.

7 In its criticism of decoupling, RUCO claims that the primary reason for decoupling is to delay
8 building of infrastructure, which does not apply to gas utilities like Southwest Gas, whose need for
9 infrastructure is predicated on customer growth.⁷ This assertion is contrary to the Commission's
10 findings in its Final Notice of Rulemaking for the Gas Energy Efficiency Rules. The Commission
11 noted:

12 The public at large will benefit from increased energy efficiency because energy
13 efficiency reduces the need for gas and the infrastructure needed to deliver it. This
14 results in fewer adverse environmental impacts than transporting, distributing, and
15 using gas. The reduction in overall energy consumption that will result from the rules
should result in long-term cost savings to the affected utilities and thus to their
customers because of decreased demand for gas and gas transportation.⁸

16 RUCO also argues that the outcry by the public against decoupling militate against approving
17 decoupling at this time. Ms. Jerich testified that its constituency's opinion is strong in RUCO
18 decisions and that customer opinion should be taken into account by the Commission.⁹ But as Ms.
19 Jerich further testified, RUCO doesn't always listen to its constituency. The public seldom wants a
20 rate increase of any kind and coupled with the misinformation regarding decoupling, it is not
21 surprising that there is customer opposition. RUCO however failed to engage in an in-depth analysis
22 to assist the Commission in its decision making.

23 ...

24 ...

25 ...

26 ⁶ Tr. at 87-88.

27 ⁷ Tr. at 692-693.

28 ⁸ Notice of Final Rulemaking at 5, Docket No. RG-00000B-09-0428.

⁹ Tr. at 767-768.

1 **II. THE SIGNATORIES WILL SUPPORT THE SETTLEMENT AGREEMENT SHOULD**
2 **THE COMMISSION SELECT ALTERNATIVE A.**

3 RUCO states that “the parties themselves do not uniformly believe Option A is in the public
4 interest.”¹⁰ This statement mischaracterizes the Signatories position on Alternative A. SWEEP was
5 the only party in its pre-filed testimony in support of the Agreement that stated Option A was not in
6 the public interest. Mr. Schlegel on behalf of SWEEP, indicated SWEEP’s full support of the
7 Agreement and would accept the Commission’s decision should Alternative A be selected, that
8 Alternative A is in the public interest.¹¹ Contrary to RUCO’s assertion, every other Signatory
9 expressed a preference for Alternative B, but did not testify that Alternative A was not in the public
10 interest.

11 **III. RUCO’S FAIR VALUE ANALYSIS WAS NOT MEANINGFUL.**

12 Instead of providing a legal analysis on whether a decoupling mechanism is constitutional,
13 RUCO elected to take a wait and see approach, waiting to see the arguments raised by the other
14 parties before it “exhausts its legal research.”¹² RUCO’s failure to provide a meaningful analysis on
15 the issue of fair value, as requested by the Administrative Law Judge (“ALJ”) at the conclusion of the
16 hearing, deprives the parties of the ability to respond. The failure to provide a legal analysis also
17 serves to deprive the ALJ the opportunity to review the full discourse on the issue to assist in the
18 preparation of a recommended opinion and order. Further, if RUCO is intending to wait to some later
19 point in this proceeding, such as Open Meeting, to raise its constitutional challenges, it is patently
20 unfair to the parties and the Commission. Staff would respectfully request the right to respond, if
21 necessary, to any arguments advanced by RUCO in its reply brief.

22 **IV. CONCLUSION.**

23 For the reasons stated in its Initial Post-Hearing brief, Staff believes the Agreement is in the
24 public interest and would urge its adoption by the Commission.
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27 ¹⁰ RUCO Br. at 12.

28 ¹¹ Tr. 416:11-15.

¹² RUCO Br. at 23.

1 RESPECTFULLY SUBMITTED this 23rd day of September, 2011.

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